

104TH CONGRESS
1ST SESSION

S. 1249

To amend the Internal Revenue Code of 1986 to establish medical savings accounts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15 (legislative day, SEPTEMBER 5), 1995

Mr. FRIST introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to establish medical savings accounts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. DEDUCTION FOR CONTRIBUTIONS TO MEDICAL**
4 **SAVINGS ACCOUNTS.**

5 (a) IN GENERAL.—Part VII of subchapter B of chap-
6 ter 1 (relating to additional itemized deductions for indi-
7 viduals) is amended by redesignating section 220 as sec-
8 tion 221 and by inserting after section 219 the following
9 new section:

1 **“SEC. 220. CONTRIBUTIONS TO MEDICAL SAVINGS AC-**
2 **COUNTS.**

3 “(a) DEDUCTION ALLOWED.—In the case of an eligi-
4 ble individual, there shall be allowed as a deduction the
5 amounts paid in cash during the taxable year by the indi-
6 vidual to a medical savings account for the benefit of—

7 “(1) the eligible individual, or

8 “(2) any spouse or dependent (as defined in
9 section 152) of the eligible individual who is enrolled
10 in the same health plan as the eligible individual but
11 only if the spouse or dependent is also an eligible in-
12 dividual.

13 “(b) LIMITATIONS.—

14 “(1) ONLY 1 ACCOUNT PER FAMILY.—No de-
15 duction shall be allowed under subsection (a) for
16 amounts paid to any medical savings account for the
17 benefit of an eligible individual, such individual’s
18 spouse, or any dependent (as so defined) of such in-
19 dividual if such individual, spouse, or dependent is
20 a beneficiary of any other medical savings account.

21 “(2) DOLLAR LIMITATION.—

22 “(A) IN GENERAL.—The amount allowable
23 as a deduction under subsection (a) with re-
24 spect to contributions to a medical savings ac-
25 count for the taxable year shall not exceed the
26 lesser of—

1 “(i) \$2,500 (\$5,000 in the case of a
2 medical savings account established on be-
3 half of more than 1 individual), or

4 “(ii) the catastrophic health plan dif-
5 ferential.

6 “(B) CATASTROPHIC HEALTH PLAN DIF-
7 FERENTIAL.—For purposes of subparagraph
8 (A)(ii)—

9 “(i) IN GENERAL.—The catastrophic
10 health plan differential for any taxable
11 year is equal to the sum of the amounts
12 determined under clause (ii) for each
13 month during the taxable year for which
14 the taxpayer was an eligible individual.

15 “(ii) MONTHLY DIFFERENTIAL.—The
16 amount determined under this clause for
17 any month is the excess (if any) of—

18 “(I) the monthly premium deter-
19 mined under clause (iii) for the same
20 class of enrollment as the catastrophic
21 health plan in which the eligible indi-
22 vidual is enrolled in, over

23 “(II) the aggregate amount paid
24 for coverage for such month under the
25 catastrophic health plan.

1 “(iii) MONTHLY PREMIUM.—Not later
 2 than December 31 of each calendar year,
 3 the Secretary shall determine and publish
 4 the monthly premium (for each class of en-
 5 rollment) for coverage under the health
 6 benefits plan offered under chapter 89 of
 7 title 5, United States Code, with the high-
 8 est enrollment, adjusted for a national pop-
 9 ulation under 65 years of age (as deter-
 10 mined by the Secretary) for the following
 11 calendar year. The premium shall be deter-
 12 mined on the basis of the annual open en-
 13 rollment period with respect to such follow-
 14 ing calendar year.

15 “(C) COST-OF-LIVING ADJUSTMENT.—In
 16 the case of a taxable year beginning in a cal-
 17 endar year after 1996, each dollar amount in
 18 subparagraph (A)(i) shall be increased by an
 19 amount equal to such dollar amount multiplied
 20 by the cost-of-living adjustment under section
 21 1(f)(3) for the calendar year in which the tax-
 22 able year begins, determined by substituting
 23 ‘1995’ for ‘1992’ in subparagraph (B) thereof.

24 “(3) PHASE-IN OF DEDUCTION.—In the case of
 25 taxable years beginning after December 31, 1995,

1 and before January 1, 2000, only the following per-
 2 centages of the deduction allowable under this sec-
 3 tion (without regard to this paragraph) shall be al-
 4 lowed:

“If the taxable year begins in:	The applicable percentage is:
1996 or 1997	50 percent
1998 or 1999	75 percent.

5 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
 6 poses of this section—

7 “(1) ELIGIBLE INDIVIDUAL.—The term ‘eligible
 8 individual’ means, with respect to any month, any
 9 individual who is not eligible during such month—

10 “(A) to participate in an employer-sub-
 11 sidized health plan maintained by an employer
 12 of the individual, the individual’s spouse, or any
 13 dependent (as defined in section 152) of either,
 14 or

15 “(B) to receive any employer contribution
 16 to a medical savings account.

17 For purposes of subparagraph (B), a self-employed
 18 individual (within the meaning of section 401(c))
 19 shall not be treated as his own employer.

20 “(2) CATASTROPHIC HEALTH PLAN.—For pur-
 21 poses of this section—

1 “(A) IN GENERAL.—The term ‘cata-
2 strophic health plan’ means a health plan
3 which—

4 “(i) has an annual out-of-pocket ex-
5 pense requirement per covered individual
6 which is not less than \$2,500, and

7 “(ii) has an aggregate annual limit on
8 out-of-pocket expenses for all covered indi-
9 viduals which is not less than \$5,000.

10 “(B) MINIMUM PERIOD OF PLAN.—A
11 health plan shall not be treated as a cata-
12 strophic health plan unless—

13 “(i) the initial period of coverage
14 under the plan is 24 months, and

15 “(ii) coverage under the plan may not
16 be terminated after such initial period
17 without advance notice of at least 1 year
18 unless the individual is enrolling in another
19 catastrophic health plan.

20 Clauses (i) and (ii) shall not preclude any ter-
21 mination for cause.

22 “(C) HEALTH PLAN.—The term ‘health
23 plan’ means any plan or arrangement which
24 provides, or pays the cost of, health benefits.

1 Such term does not include the following, or
2 any combination thereof:

3 “(i) Coverage only for accidental
4 death, dismemberment, dental, or vision.

5 “(ii) Coverage providing wages or pay-
6 ments in lieu of wages for any period dur-
7 ing which the employee is absent from
8 work on account of sickness or injury.

9 “(iii) A medicare supplemental policy
10 (as defined in section 1882(g)(1)) or addi-
11 tional health care services under a risk
12 contract under section 1876 for which an
13 individual is charged premiums in addition
14 to premiums under part B of title XVIII.

15 “(iv) Coverage issued as a supplement
16 to liability insurance.

17 “(v) Workers’ compensation or similar
18 insurance.

19 “(vi) Automobile medical-payment in-
20 surance.

21 “(vii) A long-term care insurance pol-
22 icy, including a nursing home fixed indem-
23 nity policy (unless the Secretary deter-
24 mines that such a policy provides suffi-
25 ciently comprehensive coverage of a benefit

1 so that it should be treated as a health
2 plan).

3 “(viii) An equivalent health care pro-
4 gram.

5 “(ix) Any plan or arrangement not de-
6 scribed in any preceding subparagraph
7 which provides for benefit payments, on a
8 periodic basis, for a specified disease or ill-
9 ness or period of hospitalization without
10 regard to the costs incurred or services
11 rendered during the period to which the
12 payments relate.

13 “(x) Such other plan or arrangement
14 as the Secretary determines is not a health
15 plan.

16 “(D) EQUIVALENT HEALTH CARE PRO-
17 GRAM.—The term ‘equivalent health care pro-
18 gram’ means—

19 “(i) part A or part B of the medicare
20 program under title XVIII of the Social
21 Security Act,

22 “(ii) the medicaid program under title
23 XIX of the Social Security Act,

1 “(iii) the health care program for ac-
2 tive military personnel under title 10,
3 United States Code,

4 “(iv) the veterans health care program
5 under chapter 17 of title 38, United States
6 Code,

7 “(v) the Civilian Health and Medical
8 Program of the Uniformed Services
9 (CHAMPUS), as defined in section
10 1073(4) of title 10, United States Code,
11 and

12 “(vi) the Indian health service pro-
13 gram under the Indian Health Care Im-
14 provement Act (25 U.S.C. 1601 et seq.).

15 “(3) MEDICAL SAVINGS ACCOUNT.—The term
16 ‘medical savings account’ has the meaning given
17 such term by section 7705.

18 “(4) TIME WHEN CONTRIBUTIONS DEEMED
19 MADE.—A contribution shall be deemed to be made
20 on the last day of the preceding taxable year if the
21 contribution is made on account of such taxable year
22 and is made not later than the time prescribed by
23 law for filing the return for such taxable year (not
24 including extensions thereof).”

1 (b) DEDUCTION ALLOWED AGAINST GROSS IN-
 2 COME.—Subsection (a) of section 62 (defining adjusted
 3 gross income) is amended by inserting after paragraph
 4 (15) the following new paragraph:

5 “(16) MEDICAL SAVINGS ACCOUNTS.—The de-
 6 duction allowed by section 220.”

7 (c) CLERICAL AMENDMENT.—The table of sections
 8 for part VII of subchapter B of chapter 1 is amended by
 9 striking the last item and inserting the following new
 10 items:

“Sec. 220. Contributions to medical savings accounts.
 “Sec. 221. Cross reference.”

11 (d) EFFECTIVE DATE.—The amendments made by
 12 this section shall apply to taxable years beginning after
 13 December 31, 1995.

14 **SEC. 2. EXCLUSION FROM INCOME OF EMPLOYER CON-**
 15 **TRIBUTIONS TO MEDICAL SAVINGS AC-**
 16 **COUNTS.**

17 (a) IN GENERAL.—Section 106 (relating to contribu-
 18 tions by employers to accident and health plans) is amend-
 19 ed by adding at the end the following new subsection:

20 “(b) CONTRIBUTIONS TO MEDICAL SAVINGS AC-
 21 COUNTS.—

22 “(1) TREATMENT OF CONTRIBUTIONS.—

23 “(A) IN GENERAL.—Gross income of an
 24 employee who is covered by a catastrophic

1 health plan of an employer shall not include any
2 employer contribution to a medical savings ac-
3 count on behalf of the employee or the employ-
4 ee's spouse or dependents (as defined in section
5 152).

6 “(B) NO CONSTRUCTIVE RECEIPT.—No
7 amount shall be included in the gross income of
8 any employee solely because the employee may
9 choose between the contributions described in
10 subparagraph (A) and employer contributions
11 to a health plan of the employer.

12 “(2) LIMITATIONS.—

13 “(A) ONLY 1 ACCOUNT PER FAMILY.—No
14 exclusion shall be allowed under paragraph (1)
15 for amounts paid to any medical savings ac-
16 count on behalf of an employee or the employ-
17 ee's spouse or dependents (as so defined) if em-
18 ployee, spouse, or dependent is a beneficiary of
19 any other medical savings account.

20 “(B) DOLLAR LIMITATION.—The amount
21 which may be excluded under paragraph (1) for
22 any taxable year shall not exceed the lesser of—

23 “(i) \$2,500 (\$5,000 in the case of a
24 medical savings account established on be-
25 half of more than 1 individual), or

1 “(ii) the sum of the catastrophic
2 health plan differentials for each month
3 during the taxable year.

4 “(3) CATASTROPHIC HEALTH PLAN DIFFEREN-
5 TIAL.—For purposes of subparagraph (B)(ii), the
6 catastrophic health plan differential with respect to
7 any employee for any month is the amount by which
8 the cost for the month of the catastrophic health
9 plan in which the employee is enrolled is less than—

10 “(A) the cost of the health plan (for the
11 same class of enrollment) which—

12 “(i) the employee is eligible to enroll
13 in through the employer, and

14 “(ii) has the highest cost of all health
15 plans in which the employee may enroll in
16 through the employer, or

17 “(B) if the employee is not eligible to en-
18 roll in any such health plan through the em-
19 ployer or the employer does not offer any such
20 health plan, the monthly premium for the
21 month determined under section
22 220(b)(2)(B)(iii).

23 “(4) COST-OF-LIVING ADJUSTMENT.—In the
24 case of a taxable year beginning in a calendar year
25 after 1996, each dollar amount in paragraph

1 (2)(B)(i) shall be increased by an amount equal to
 2 such dollar amount multiplied by the cost-of-living
 3 adjustment under section 1(f)(3) for the calendar
 4 year in which the taxable year begins, determined by
 5 substituting ‘1995’ for ‘1992’ in subparagraph (B)
 6 thereof.

7 “(5) DEFINITIONS.—For purposes of this sub-
 8 section—

9 “(A) CATASTROPHIC HEALTH PLAN.—The
 10 term ‘catastrophic health plan’ has the meaning
 11 given such term by section 220(c)(2).

12 “(B) MEDICAL SAVINGS ACCOUNT.—The
 13 term ‘medical savings account’ has the meaning
 14 given such term by section 7705.”

15 (b) EMPLOYER PAYMENTS EXCLUDED FROM EM-
 16 PLOYMENT BASE.—

17 (1) SOCIAL SECURITY.—

18 (A) Subsection (a) of section 3121 is
 19 amended by striking “or” at the end of para-
 20 graph (20), by striking the period at the end of
 21 paragraph (21) and inserting “; or”, and by in-
 22 serting after paragraph (21) the following new
 23 paragraph:

24 “(22) any payment made to or for the benefit
 25 of an employee if at the time of such payment it is

1 reasonable to believe that the employee will be able
2 to exclude such payment from income under section
3 106(b).”

4 (B) Subsection (a) of section 209 of the
5 Social Security Act is amended by striking “or”
6 at the end of paragraph (18), by striking the
7 period at the end of paragraph (19) and insert-
8 ing “; or”, and by inserting after paragraph
9 (19) the following new paragraph:

10 “(20) any payment made to or for the benefit
11 of an employee if at the time of such payment it is
12 reasonable to believe that the employee will be able
13 to exclude such payment from income under section
14 106(b) of the Internal Revenue Code of 1986.”

15 (2) RAILROAD RETIREMENT.—Subsection (e) of
16 section 3231 is amended by adding at the end the
17 following new paragraph:

18 “(10) MEDICAL SAVINGS ACCOUNT CONTRIBU-
19 TIONS.—The term ‘compensation’ shall not include
20 any payment made to or for the benefit of an em-
21 ployee if at the time of such payment it is reason-
22 able to believe that the employee will be able to ex-
23 clude such payment from income under section
24 106(b).”

1 (3) UNEMPLOYMENT.—Subsection (b) of sec-
2 tion 3306 is amended by striking “or” at the end of
3 paragraph (15), by striking the period at the end of
4 paragraph (16) and inserting “; or”, and by insert-
5 ing after paragraph (16) the following new para-
6 graph:

7 “(17) any payment made to or for the benefit
8 of an employee if at the time of such payment it is
9 reasonable to believe that the employee will be able
10 to exclude such payment from income under section
11 106(b).”

12 (4) WITHHOLDING.—Subsection (a) of section
13 3401 is amended by striking “or” at the end of
14 paragraph (19), by striking the period at the end of
15 paragraph (20) and inserting “; or”, and by insert-
16 ing after paragraph (20) the following new para-
17 graph:

18 “(21) any payment made to or for the benefit
19 of an employee if at the time of such payment it is
20 reasonable to believe that the employee will be able
21 to exclude such payment from income under section
22 106(b).”

23 (c) CONFORMING AMENDMENT.—Section 106 is
24 amended by striking “Gross” and inserting:

25 “(a) GENERAL RULE.—Gross”.

1 (d) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to taxable years beginning after
 3 December 31, 1995.

4 **SEC. 3. MEDICAL SAVINGS ACCOUNTS.**

5 (a) IN GENERAL.—Chapter 79 is amended by adding
 6 at the end the following new section:

7 **“SEC. 7705. MEDICAL SAVINGS ACCOUNTS.**

8 “(a) GENERAL RULE.—The term ‘medical savings
 9 account’ means a trust created or organized in the United
 10 States for the exclusive benefit of the beneficiaries of the
 11 trust, but only if the written governing instrument creat-
 12 ing the trust meets the following requirements:

13 “(1) Except in the case of a rollover contribu-
 14 tion described in subsection (c)(5), no contribution
 15 will be accepted unless—

16 “(A) it is in cash, and

17 “(B) it is made for a period during which
 18 the individual on whose behalf it is made is cov-
 19 ered under a catastrophic health plan.

20 “(2) Contributions will not be accepted for any
 21 taxable year in excess of the amount allowable as a
 22 deduction under section 220(b)(2) for such taxable
 23 year.

24 “(3) The trustee is a bank (as defined in sec-
 25 tion 408(n)), insurance company (as defined in sec-

tion 816), or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

“(4) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

“(5) No part of the trust assets will be invested in life insurance contracts.

“(6) The interest of an individual in the balance in the individual’s account is nonforfeitable.

“(b) TREATMENT OF ACCOUNTS.—

“(1) ACCOUNT TREATED AS GRANTOR TRUST.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the account beneficiary of a medical savings account shall be treated for purposes of this title as the owner of such account and shall be subject to tax thereon in accordance with subpart E of part I of subchapter J of this chapter (relating to grantors and others treated as substantial owners).

“(B) TREATMENT OF CAPITAL LOSSES.—

With respect to assets held in a medical savings account, any capital loss for a taxable year from the sale or exchange of such an asset shall

1 be allowed only to the extent of capital gains
2 from such assets for such taxable year. Any
3 capital loss which is disallowed under the pre-
4 ceding sentence shall be treated as a capital
5 loss from the sale or exchange of such an asset
6 in the next taxable year.

7 “(2) ACCOUNT TERMINATES IF INDIVIDUAL EN-
8 GAGES IN PROHIBITED TRANSACTION.—

9 “(A) IN GENERAL.—If, during any taxable
10 year of the account beneficiary, such beneficiary
11 engages in any transaction prohibited by section
12 4975 with respect to the account, the account
13 shall cease to be a medical savings account as
14 of the first day of such taxable year.

15 “(B) ACCOUNT TREATED AS DISTRIBUTING
16 ALL ITS ASSETS.—In any case in which any ac-
17 count ceases to be a medical savings account by
18 reason of subparagraph (A) on the first day of
19 any taxable year, subsection (c) shall be applied
20 as if—

21 “(i) there were a distribution on such
22 first day in an amount equal to the fair
23 market value (on such first day) of all as-
24 sets in the account (on such first day), and

1 “(ii) no portion of such distribution
2 were used to pay qualified medical ex-
3 penses.

4 “(3) EFFECT OF PLEDGING ACCOUNT AS SECUR-
5 RITY.—If, during any taxable year, the account ben-
6 eficiary uses the account or any portion thereof as
7 security for a loan for purposes other than to pay
8 qualified medical expenses, the portion so used is
9 treated as distributed and not used to pay qualified
10 medical expenses.

11 “(c) TREATMENT OF DISTRIBUTIONS.—

12 “(1) AMOUNTS USED FOR QUALIFIED MEDICAL
13 EXPENSES.—Any amount paid or distributed out of
14 a medical savings account which is used exclusively
15 to pay qualified medical expenses of any account
16 beneficiary (or spouse or dependent (as defined in
17 section 152)) of the account shall not be includible
18 in gross income.

19 “(2) INCLUSION OF AMOUNTS NOT USED FOR
20 QUALIFIED MEDICAL EXPENSES.—

21 “(A) IN GENERAL.—Any amount paid or
22 distributed out of a medical savings account
23 which is not used exclusively to pay the quali-
24 fied medical expenses of the account beneficiary
25 (or spouse or dependent (as so defined)) shall

1 be included in the gross income of such bene-
2 ficiary to the extent such amount does not ex-
3 ceed the excess of—

4 “(i) the aggregate contributions to
5 such account which were not includible in
6 gross income by reason of section 106(b)
7 or which were deductible under section
8 220, over

9 “(ii) the aggregate prior payments or
10 distributions from such account which were
11 includible in gross income under this para-
12 graph.

13 “(B) SPECIAL RULES.—For purposes of
14 subparagraph (A)—

15 “(i) all payments and distributions
16 during any taxable year shall be treated as
17 1 distribution, and

18 “(ii) any distribution of property shall
19 be taken into account at its fair market
20 value on the date of the distribution.

21 “(3) EXCESS CONTRIBUTIONS RETURNED BE-
22 FORE DUE DATE OF RETURN.—Paragraph (2) shall
23 not apply to the distribution of any contribution paid
24 during a taxable year to a medical savings account

1 to the extent that such contribution exceeds the
2 amount under subsection (a)(2) if—

3 “(A) such distribution is received by the
4 individual on or before the last day prescribed
5 by law (including extensions of time) for filing
6 such individual’s return for such taxable year,
7 and

8 “(B) such distribution is accompanied by
9 the amount of net income attributable to such
10 excess contribution.

11 Any net income described in subparagraph (B) shall
12 be included in the gross income of the individual for
13 the taxable year in which it is received.

14 “(4) PENALTY FOR DISTRIBUTIONS NOT USED
15 FOR QUALIFIED MEDICAL EXPENSES.—

16 “(A) IN GENERAL.—The tax imposed by
17 chapter 1 on the account beneficiary for any
18 taxable year in which there is a payment or dis-
19 tribution from a medical savings account of
20 such beneficiary which is includible in gross in-
21 come under paragraph (2) shall be increased by
22 10 percent of the amount which is so includible.

23 “(B) EXCEPTION FOR DISABILITY OR
24 DEATH.—Subparagraph (A) shall not apply if
25 the payment or distribution is made after the

1 account beneficiary becomes disabled within the
2 meaning of section 72(m)(7) or dies.

3 “(5) ROLLOVER CONTRIBUTION.—If any
4 amount paid or distributed from a medical savings
5 account to the account beneficiary (or spouse or de-
6 pendent (as defined in section 152)) is paid into a
7 medical savings account for the benefit of such bene-
8 ficiary (or spouse or dependent) not later than the
9 60th day after the day on which the beneficiary (or
10 spouse or dependent) receives the payment or dis-
11 tribution—

12 “(A) paragraph (2) shall not apply to such
13 amount, and

14 “(B) such amount shall be treated as a
15 rollover contribution described in this para-
16 graph.

17 “(6) COORDINATION WITH MEDICAL EXPENSE
18 DEDUCTION.—For purposes of section 213, any pay-
19 ment or distribution out of a medical savings ac-
20 count for qualified medical expenses shall not be
21 treated as an expense paid for medical care to the
22 extent of the amount of such payment or distribu-
23 tion which is attributable to amounts described in
24 paragraph (2)(A).

1 “(7) TRANSFER OF ACCOUNT INCIDENT TO DI-
2 VORCE.—The transfer of an individual’s interest in
3 a medical savings account to an individual’s spouse
4 or former spouse under a divorce or separation in-
5 strument described in subparagraph (A) of section
6 71(b)(2) shall not be considered a taxable transfer
7 made by such individual notwithstanding any other
8 provision of this subtitle, and such interest at the
9 time of the transfer shall be treated as a medical
10 savings account of such spouse, and not of such in-
11 dividual. Any such account or annuity shall, for pur-
12 poses of this subtitle, be treated as maintained for
13 the benefit of the spouse to whom the interest was
14 transferred.

15 “(d) DEFINITIONS.—For purposes of this section—

16 “(1) QUALIFIED MEDICAL EXPENSES.—

17 “(A) IN GENERAL.—The term ‘qualified
18 medical expenses’ means any expense for—

19 “(i) medical care (as defined in sec-
20 tion 213(d)), or

21 “(ii) qualified long-term care services.

22 “(B) EXCEPTION FOR INSURANCE.—

23 “(i) IN GENERAL.—Such term shall
24 not include any expense for insurance.

1 “(ii) EXCEPTIONS.—Clause (i) shall
2 not apply to any expense for—

3 “(I) coverage under a health plan
4 during a period of continuation cov-
5 erage described in section
6 4980B(f)(2)(B),

7 “(II) coverage under a medicare
8 supplemental policy (as defined in sec-
9 tion 1882(g)(1) of the Social Security
10 Act), or

11 “(III) payment of premiums
12 under part A or B of title XVIII of
13 the Social Security Act,

14 “(IV) coverage under a policy
15 providing qualified long-term care
16 services, or

17 “(V) coverage under a health
18 plan during any period during which
19 an individual is unemployed.

20 “(C) QUALIFIED LONG-TERM CARE SERV-
21 ICES.—For purposes of this paragraph—

22 “(i) IN GENERAL.—The term ‘quali-
23 fied long-term care services’ means nec-
24 essary diagnostic, preventive, therapeutic,

1 rehabilitative, and maintenance (including
2 personal care) services—

3 “(I) which are required by an in-
4 dividual during any period during
5 which such individual is a functionally
6 impaired individual,

7 “(II) which have as their primary
8 purpose the provision of needed assist-
9 ance with 1 or more activities of daily
10 living which a functionally impaired
11 individual is certified as being unable
12 to perform under clause (ii)(I), and

13 “(III) which are provided pursu-
14 ant to a continuing plan of care pre-
15 scribed by a licensed health care prac-
16 titioner (other than a relative of such
17 individual).

18 “(ii) FUNCTIONALLY IMPAIRED INDI-
19 VIDUAL.—

20 “(I) IN GENERAL.—The term
21 ‘functionally impaired individual’
22 means any individual who is certified
23 by a licensed health care practitioner
24 (other than a relative of such individ-
25 ual) as being unable to perform, with-

1 out substantial assistance from an-
 2 other individual (including assistance
 3 involving verbal reminding, physical
 4 cueing, or substantial supervision), at
 5 least 3 activities of daily living de-
 6 scribed in clause (iii).

7 “(II) SPECIAL RULE FOR HOME
 8 HEALTH CARE SERVICES.—In the case
 9 of services which are provided during
 10 any period during which an individual
 11 is residing within the individual’s
 12 home (whether or not the services are
 13 provided within the home), subclause
 14 (I) shall be applied by substituting ‘2’
 15 for ‘3’. For purposes of this
 16 subclause, a nursing home or similar
 17 facility shall not be treated as a home.

18 “(iii) ACTIVITIES OF DAILY LIVING.—
 19 Each of the following is an activity of daily
 20 living:

21 “(I) Eating.

22 “(II) Transferring.

23 “(III) Toileting.

24 “(IV) Dressing.

25 “(V) Bathing.

1 “(D) LICENSED HEALTH CARE PRACTI-
2 TIONER.—For purposes of subparagraph (C)—

3 “(i) IN GENERAL.—The term ‘licensed
4 health care practitioner’ means—

5 “(I) a physician or registered
6 professional nurse,

7 “(II) a qualified community care
8 case manager (as defined in clause
9 (ii)), or

10 “(III) any other individual who
11 meets such requirements as may be
12 prescribed by the Secretary after con-
13 sultation with the Secretary of Health
14 and Human Services.

15 “(ii) QUALIFIED COMMUNITY CARE
16 CASE MANAGER.—The term ‘qualified com-
17 munity care case manager’ means an indi-
18 vidual or entity which—

19 “(I) has experience or has been
20 trained in providing case management
21 services and in preparing individual
22 care plans;

23 “(II) has experience in assessing
24 individuals to determine their func-
25 tional and cognitive impairment;

1 “(III) is not a relative of the in-
2 dividual receiving case management
3 services; and

4 “(IV) meets such requirements
5 as may be prescribed by the Secretary
6 after consultation with the Secretary
7 of Health and Human Services.

8 “(E) RELATIVE.—For purposes of this
9 paragraph, the term ‘relative’ means an individ-
10 ual bearing a relationship to another individual
11 which is described in paragraphs (1) through
12 (8) of section 152(a).

13 “(2) ACCOUNT BENEFICIARY.—The term ‘ac-
14 count beneficiary’ means the individual for whose
15 benefit the medical savings account is maintained.

16 “(e) CUSTODIAL ACCOUNTS.—For purposes of this
17 section, a custodial account shall be treated as a trust if—

18 “(1) the assets of such account are held by a
19 bank (as defined in section 408(n)), insurance com-
20 pany (as defined in section 816), or another person
21 who demonstrates to the satisfaction of the Sec-
22 retary that the manner in which such person will ad-
23 minister the account will be consistent with the re-
24 quirements of this section, and

1 “(2) the custodial account would, except for the
2 fact that it is not a trust, constitute a medical sav-
3 ings account described in subsection (a).

4 For purposes of this title, in the case of a custodial ac-
5 count treated as a trust by reason of the preceding sen-
6 tence, the custodian of such account shall be treated as
7 the trustee thereof.

8 “(f) REPORTS.—The trustee of a medical savings ac-
9 count shall make such reports regarding such account to
10 the Secretary and to the individual for whose benefit the
11 account is maintained with respect to contributions, dis-
12 tributions, and such other matters as the Secretary may
13 require under regulations. The reports required by this
14 subsection shall be filed at such time and in such manner
15 and furnished to such individuals at such time and in such
16 manner as may be required by those regulations.”

17 (b) PREEMPTION OF CERTAIN CONFLICTING
18 LAWS.—

19 (1) IN GENERAL.—Notwithstanding any other
20 provision of law, no Federal or State law shall pro-
21 hibit a carrier from offering a catastrophic health
22 plan in conjunction with a medical savings account
23 (as defined in section 7705 of the Internal Revenue
24 Code of 1986).

1 (2) DEFINITIONS.—For purposes of this sub-
 2 section—

3 (A) the term “carrier” means any entity li-
 4 censed or authorized under Federal or State
 5 law to offer a health plan,

6 (B) the term “catastrophic health plan”
 7 means a health plan—

8 (i) which is described in section
 9 220(c)(2) of the Internal Revenue Code of
 10 1986, or

11 (ii) a similar health plan which pro-
 12 vides significant cost sharing, and

13 (C) the term “health plan” has the mean-
 14 ing given such term by section 220(c)(2)(C) of
 15 such Code.

16 (c) TREATMENT OF EXCESS CONTRIBUTIONS.—Sec-
 17 tion 4973 (relating to tax on excess contributions to indi-
 18 vidual retirement accounts, certain section 403(b) con-
 19 tracts, and certain individual retirement annuities) is
 20 amended—

21 (1) by inserting “**MEDICAL SAVINGS AC-**
 22 **COUNTS,**” after “**ACCOUNTS,**” in the heading of
 23 such section,

24 (2) by striking “or” at the end of paragraph
 25 (1) of subsection (a),

1 (3) by redesignating paragraph (2) of sub-
 2 section (a) as paragraph (3) and by inserting after
 3 paragraph (1) the following:

4 “(2) a medical savings account (within the
 5 meaning of section 7705(a)), or”, and

6 (4) by adding at the end the following new sub-
 7 section:

8 “(d) EXCESS CONTRIBUTIONS TO MEDICAL SAVINGS
 9 ACCOUNTS.—For purposes of this section, in the case of
 10 a medical savings account (within the meaning of section
 11 7705(a)), the term ‘excess contributions’ means the
 12 amount by which the amount contributed for the taxable
 13 year to the account exceeds the amount which may be con-
 14 tributed to the account under section 7705(a)(2) for such
 15 taxable year. For purposes of this subsection, any con-
 16 tribution which is distributed out of the medical savings
 17 account in a distribution to which section 7705(c)(3) ap-
 18 plies shall be treated as an amount not contributed.”

19 (d) TREATMENT OF PROHIBITED TRANSACTIONS.—
 20 Section 4975 (relating to prohibited transactions) is
 21 amended—

22 (1) by adding at the end of subsection (c) the
 23 following new paragraph:

24 “(4) SPECIAL RULE FOR MEDICAL SAVINGS AC-
 25 COUNTS.—An individual for whose benefit a medical

1 savings account (within the meaning of section
 2 7705(a)) is established shall be exempt from the tax
 3 imposed by this section with respect to any trans-
 4 action concerning such account (which would other-
 5 wise be taxable under this section) if, with respect
 6 to such transaction, the account ceases to be a medi-
 7 cal savings account by reason of the application of
 8 section 7705(b)(2)(A) to such account.”, and

9 (2) by inserting “or a medical savings account
 10 described in section 7705(a)” in subsection (e)(1)
 11 after “described in section 408(a)”.

12 (e) FAILURE TO PROVIDE REPORTS ON MEDICAL
 13 SAVINGS ACCOUNTS.—Section 6693 (relating to failure to
 14 provide reports on individual retirement accounts or annu-
 15 ities) is amended—

16 (1) by inserting “**OR ON MEDICAL SAVINGS**
 17 **ACCOUNTS**” after “**ANNUITIES**” in the heading of
 18 such section, and

19 (2) by adding at the end of subsection (a) the
 20 following: “The person required by section 7705(f)
 21 to file a report regarding a medical savings account
 22 at the time and in the manner required by such sec-
 23 tion shall pay a penalty of \$50 for each failure un-
 24 less it is shown that such failure is due to reasonable
 25 cause.”

1 (f) CLERICAL AMENDMENTS.—

2 (1) The table of sections for chapter 43 is
 3 amended by striking the item relating to section
 4 4973 and inserting the following:

“Sec. 4973. Treatment of excess contributions to individual retire-
 ment accounts, medical savings accounts, certain
 403(b) contracts, and certain individual retirement
 annuities.”

5 (2) The table of sections for subchapter B of
 6 chapter 68 is amended by inserting “or on medical
 7 savings accounts” after “annuities” in the item re-
 8 lating to section 6693.

9 **SEC. 4. SENSE OF THE SENATE REGARDING TAX TREAT-**
 10 **MENT OF HEALTH INSURANCE AND LONG-**
 11 **TERM CARE INSURANCE.**

12 It is the sense of the Senate that—

13 (1) there should be tax parity for all health in-
 14 surance whether provided or purchased by individ-
 15 uals, self-employed, or employers; and

16 (2) long-term care services and insurance
 17 should be provided tax status similar to medical care
 18 services and insurance.

○

S 1249 IS1S—2

S 1249 IS1S—3